

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TROY DEIMERLY,

Plaintiff,

v.

SHELLY MACKINDER, *et al.*,

Defendants.

Case No. C07-5166RBL-KLS

ORDER DIRECTING SERVICE  
BY UNITED STATES  
MARSHAL AND PROCEDURES

This civil rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Plaintiff has been granted leave to proceed *in forma pauperis*.

The Clerk is directed to effect service as provided below:

(1) Service by United States Marshal.

It is hereby ORDERED that the United States Marshal shall send the following to each named defendant by first class mail: a copy of the first amended complaint (Dkt. #9) and of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of service of Summons, and a return envelope, postage prepaid, addressed to the Clerk's Office. All costs of service shall be advanced by the United States. The Clerk shall assemble the necessary documents to effect service.

(2) Response Required

Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of Service of Summons. Each defendant who timely returns the signed Waiver shall have **sixty (60) days** after the date

1 designated on the Notice of Lawsuit to file and serve an answer or a motion directed to the complaint, as  
2 permitted by Rule 12 of the Federal Rules of Civil Procedure.

3 Any defendant who fails to timely return the signed Waiver will be personally served with a  
4 summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule  
5 4(d)(2). A defendant who has been personally served shall file an answer or motion permitted under Rule  
6 12 within **thirty (30) days** after service.

7 (3) Filing and Service by Parties, Generally.

8 All original documents and papers submitted for consideration by the Court in this case, and a  
9 duplicate of all such papers, are to be filed with the Clerk of this Court. The originals and copies of all  
10 such papers shall indicate in the upper right-hand corner the name of the Magistrate Judge to whom the  
11 copies are to be delivered. The papers shall be accompanied by proof that such documents have been  
12 served upon counsel for the opposing party (or upon any party acting *pro se*). The proof shall show the  
13 day and manner of service and may be written acknowledgment of service, by certificate of a member of  
14 the bar of this Court, or by affidavit of the person who served the papers.

15 (4) Motions.

16 Any request for Court action shall be set forth in a motion, properly filed and served, pursuant to  
17 the requirements of Local Rule CR 7. If a party fails to file and serve timely opposition to a motion, the  
18 Court may deem any opposition to be without merit.

19 (5) Motions for Summary Judgment

20 If one of the parties files a motion for summary judgment pursuant to Federal Rules of Civil  
21 Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56 requires a nonmoving  
22 party to submit affidavits or other evidence in opposition to a motion for summary judgment if the moving  
23 party has shown the absence of issues of material fact and an entitlement to judgment as a matter of law. A  
24 nonmoving party may not rest upon the mere allegations or denials of prior pleadings. Rather, successful  
25 opposition to a motion for summary judgment requires the nonmoving party to set forth, through affidavits  
26 or other evidence, specific facts showing a genuine issue for trial. Failure by the nonmoving party to  
27 oppose a summary judgment motion or to present counter evidence could result in the Court accepting the  
28 moving party's evidence as the truth, and entering final judgment in favor of the moving party without a

1 full trial. Rand v. Rowland, 113 F.3d 1520 (9<sup>th</sup> Cir. 1997).

2 (6) Direct Communications with District Judge or Magistrate Judge

3 No direct communication is to take place with the District Judge or Magistrate Judge with regard  
4 to this case. All relevant information and papers are to be directed to the Clerk.

5 (7) Clerk's Action

6 The Clerk is directed to send a copy of this Order and of the General Order issued by the  
7 Magistrate Judges to plaintiff and to defendant and defendant's counsel, if any.

8 DATED this 15th day of June, 2007.

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12 Karen L. Strombom  
13 United States Magistrate Judge  
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